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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/534,793	05/12/2005	Robert W. Blair	02-44 US	1653
23693	7590	11/09/2007		
Varian Inc. Legal Department 3120 Hansen Way D-102 Palo Alto, CA 94304			EXAMINER NGUYEN, SANG H	
			ART UNIT 2886	PAPER NUMBER
			MAIL DATE 11/09/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

TH

Office Action Summary	Application No.		Applicant(s)	
	10/534,793		BLAIR, ROBERT W.	
	Examiner		Art Unit	
	Sang Nguyen		2886	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on amended on 09/04/07.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-15 is/are pending in the application.
- 4a) Of the above claim(s) 14 and 15 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date: _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date: _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

Applicant's response to amendment filed on 09/04/07 has been entered to claims 1 and 3-13 and claims 2 has been canceled by the amendment on 09/04/07. However, new claims 14-15 do not entered because new claims 14-15 have been submitted to have different inventions to invention of claims 1 and 3-13 (see MPEP § 821.03).

Election/Restrictions

Newly submitted claims 14-15 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: claims 14-15 are distinct for the reasons have acquired a separate status in the art as shown by their different classification because of their recognized divergent subject matter, for example, **Claims 14-15 require a method of optical analysis of a flowing fluid comprising the steps of: (a) splitting said fluid flow into at least a pair of flow paths, said flow paths comprising respective different flow path dimensions; (b) aligning substantially identical optical paths along respective said flow paths; and (c) performing photometric observations for said optical path.**

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. **Accordingly, claims 14-15 are withdrawn from consideration as being directed to a non-elected invention.** See 37 CFR 1.142(b) and MPEP § 821.03.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1 and 3-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baba et al (U.S. Patent No. 4,462,962) in view of Saito et al (U.S. Patent No. 5,606,412).

Regarding claim 1; Baba et al discloses a flow through cell for, comprising:
a plurality of body members (e.g., a hollow tube [1 of figure 1A] and cell holders [2A, 2B of figure 1A]) including an intermediate body member (e.g., considered to be a hollow tube [1 of figure 1A]) located between two other body members (2A, 2B of figure 1A), the plurality of body members (1, 2A, 2B of figure 1A) being clamped together by O-ring (5A,5B of figure 1A and col.4 lines48-52) and providing a small volume flow through passage (7A, 7B of figure 1A and col.4 lines 55-57),

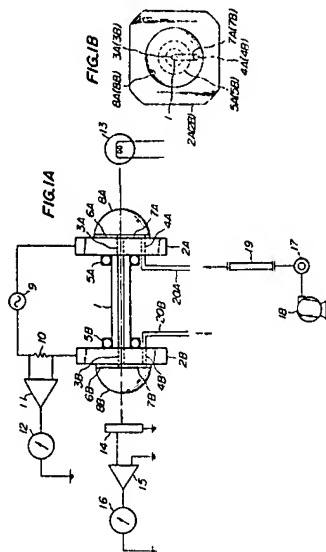
wherein a part of the flow through passage (figure 1A) comprises a hole (3A, 3B of figure 1A) through the intermediate body member (1 of figure 1A) together with a

liquid inlet region (4A of figure 1A) at one end of the hole (3A of figure 1A) and a liquid outlet region (4B of figure 1A) at the other end of the hole (3B of figure 1A), wherein the two other body members (2A, 2B of figure 1A) are each associated with an optically transparent window (8A, 8B of figure 1A) aligned with a respective end of the hole (3A, 3B of figure 1A) through the intermediate body member (1 of figure 1A) thereby providing an optical pathway (figure 1A, e.g., from the light source [13 of figure 1] to photodetector [14 of figure 1]) through said part of the flow through passage (figure 1),

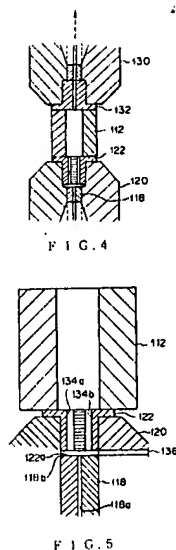
wherein the liquid inlet and liquid outlet regions (4A, 4B of figure 1) are provided by respectively, a portion of the flow through passage (7A, 7B of figure 1) through which liquid flows into or out of a said region substantially immediately adjacent the optically transparent window (8A, 8B of figure 1) transversely of the direction of the hole (3A, 3B of figure 1). See figures 1-5.

It is noted that the recitation "use in a spectrophotometer for analysis of dissolved chemical substances in a flowing liquid stream" has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

U.S. Patent Jul. 31, 1984 Sheet 1 of 5 4,462,962



U.S. Patent Feb. 25, 1997 Sheet 3 of 12 5,606,412



Baba et al discloses all of features of claimed invention except for a resilient sealing gasket located between facing surfaces of the intermediate body member and, respectively, each of the two other body members, wherein each gasket includes a gallery which provides said portion of the flow through passage. However, Saito et al teaches that it is known in the art to provide a flow cell assembly (figures 1 and 4-6) having a resilient sealing gasket (122, 132 of figure 4) located between facing surfaces of the intermediate body member (112 of figure 4) and, respectively, each of the two other body members (120, 130 of figure 4), wherein each gasket (122 of figure 6) includes a gallery (e.g., aperture, opening or hole [134a-134b of figure 6]) which provides said portion of the flow through passage (112 of figure 4). It would have been obvious to one having ordinary skill in the art at the time the invention was made to

incorporate flow cell of Baba et al with a resilient sealing gasket located between facing surfaces of the intermediate body member and, respectively, each of the two other body members, wherein each gasket includes a gallery which provides said portion of the flow through passage as taught by Saito et al for the purpose of improving flow cell for introducing fluids and deteriorating the accuracy in quantitative analysis.

Regarding claim 3; Baba et al discloses all of features of claimed invention except for the gallery in the gasket on an inlet side of the flow through passage is in the form generally of a spiral. However, Saito et al teaches that it is known in the art to provide the gallery (34a, 34b of figure 6) in the gasket (112 of figure 6) on an inlet side of the flow through passage is in the form generally of a spiral (figures 5-6). It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate flow cell of Baba et al with the gallery in the gasket on an inlet side of the flow through passage is in the form generally of a spiral as taught by Saito et al for the purpose of improving flow cell for introducing fluids and deteriorating the accuracy in quantitative analysis.

Regarding claim 4; Baba et al discloses all of features of claimed invention except for each of said other two body members includes a gallery which provides said portion of the flow through passage. However, Saito et al teaches that it is known in the art to provide each of said other two body members (120, 130 of figure 4) includes a gallery (118 of figure 5) which provides said portion of the flow through passage. It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate flow cell of Baba et al with each of said other two body

members includes a gallery which provides said portion of the flow through passage as taught by Saito et al for the purpose of improving flow cell for introducing fluids and deteriorating the accuracy in quantitative analysis.

Regarding claim 5; Baba et al discloses at least the intermediate body member (1 of figure 1), or at least each of the other two body members is resilient to provide for sealing contact (5A, 5B of figure 1) between adjacent body members (2A, 2B of figure 1). It is noted that the language of the present invention "at least the intermediate body member, or at least each of the other two body members" is alternative (optional). For the purposes examination, this feature chooses "at least the intermediate body member".

Regarding claim 6; Baba et al and Saito et al discloses the optically transparent window (8A, 8B of figure 1) associated with each of the other two body members (2A, 2B of figure 1) is a window assembly sealingly mounted within a hole (3A, 3b OF FIGURE 1) in a body member (2a, 2b of figure 1).

Regarding claim 7; Baba et al discloses the optically transparent window (8A, 8B of figure 1) associated with each of the other two body members (2A, 2B of figure 1) is provided by respectively a transparent plate (6A, 6B of figure 1) sandwiched between the intermediate body member (1 of figure 1) and one of the other body members (2A, 2B of figure 1).

Regarding claim 8; Baba et al discloses at figures 1A-1B that the body members are of rectangular parallelepiped shape.

Regarding claims 9-10; Baba et al discloses the body members are clamped together by screw fasteners (e.g., O-rings 5A, 5B of figure 1A), wherein the screw fasteners (5A,5B of figure 1A) pass through holes (3A, 3B of figure 1) in one of the other body members (2A, 2 B of figure 1A) and intermediate body member (1 of figure 1A) and engage in threaded holes (3A, 3B of figure 1A) in the other body member (2A, 2B of figure 1A).

Claims 11-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baba et al and Saito et al as applied to claim 1 above, and further in view of Watanabe et al (U.S. Patent No. 4,188,534).

Regarding claim 11; Baba et al and Saito et al discloses all of features of claimed invention except for the flow through passage includes another part located between further optically transparent windows associated with the two other body members thereby defining a second optical pathway. However, Watanabe et al teaches that it is known in the art to provide a gas analyzer comprising the flow through passage (figure 1) includes another part located between further optically transparent windows (12, 14 of figure 1) associated with the two other body members (figure 3) thereby defining a second optical pathway (figures 1-3). It would have been obvious to one having ordinary skill in the art at the time the invention was made to combine the flow through cell of Baba et al with the flow through passage includes another part located between further optically transparent windows associated with the two other body members thereby defining a second optical pathway as taught by Watanabe et al for the

purpose of improving flow cell for introducing fluids and deteriorating the accuracy in quantitative analysis.

Regarding claim 12; Baba et al, Saito et al, and Watanabe et al discloses all of features of claimed invention except for the second pathway is shorter the first way defined optical pathway. It would have been obvious to one having ordinary skill in the art at the time the invention was made to combine the flow through cell of Baba et al with the second pathway is shorter the first way defined optical pathway, since it has been held that wher the general conditions of a claim are disclosed in the prior art, discovering the optimum or working ranges involves only routine skill in the art. in re Aller, 105 USPQ 233.

Regarding claim 13; Baba et al and Saito et al discloses all of features of claimed invention except for the body members also provide an optical pathway separated from the flow through passage for a reference beam to be passed through the cell. However, Watanabe et al teaches that it is known in the art to provide a gas analyzer comprising the body members also provide an optical pathway separated from the flow through passage for a reference beam to be passed through the cell (figures 1-9). It would have been obvious to one having ordinary skill in the art at the time the invention was made to combine the flow through cell of Baba et al with the body members also provide an optical pathway separated from the flow through passage for a reference beam to be passed through the cell as taught by Watanabe et al for the purpose of improving flow cell for introducing fluids and deteriorating the accuracy in quantitative analysis.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sang Nguyen whose telephone number is (571) 272-2425. The examiner can normally be reached on 9:30 am to 7:00 pm.

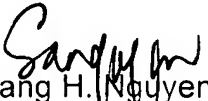
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tarifu Chowdhury can be reached on (571) 272-2800 ext. 86. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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November 1, 2007


Sang H. Nguyen
Primary Patent Examiner
Art Unit 2886